

The Honorable Barbara J. Rothstein
Trial Date: November 12, 2024

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

OLIVIA SELTO as guardian of minor child
K.P. and as Personal Representative of the
Estate of KEVIN PETERSON JR, deceased,
TAMMI BELL, individually and as
Personal Representative of the Estate, and
KEVIN PETERSON SR, individually,

Plaintiffs,

v.

COUNTY OF CLARK, a political
subdivision of the State of Washington;
SHERIFF CHUCK ATKINS; Sheriff's
Detective ROBERT ANDERSON; Sheriff's
Deputy JONATHAN FELLER; and JOHN
and JANE DOES 1-10, in their official and
personal capacities,

Defendants.

No. 3:22-cv-5384 BJR

[PROPOSED] ORDER ON
DEFENDANTS' MOTIONS *IN LIMINE*

THIS MATTER CAME before the undersigned Judge of the above-entitled Court on
Defendant's Motions in Limine.

The court considered the following pleadings and evidence:

1. Defendants' Motions in Limine;
2. Declaration of Paul J. Triesch with attached exhibits (already on record at docket #63);
3. Plaintiff's Response to Defendants' Motion in Limine; and

[PROPOSED] ORDER ON DEFENDANTS' MOTIONS IN
LIMINE - 1
3:22-cv-5384 BJR

1135-00005/Proposed Order on Defendants' Motions in Limine

KEATING, BUCKLIN & MCCORMACK, INC., P.S.

ATTORNEYS AT LAW
801 SECOND AVENUE, SUITE 1210
SEATTLE, WASHINGTON 98104
PHONE: (206) 623-8861
FAX: (206) 223-9423

1 Having considered the foregoing evidence and pleadings, the Court, being fully
2 informed of the facts herein;

3 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Defendants' Motions
4 in Limine are granted, denied, or reserved as indicated below:

5 **1. Stipulated Motion in Limine No. 1: Settlement Communications.**

6 ☐ Granted ☐ Denied ☐ Reserved

7 Comments: _____

8 _____

9 _____

10 _____.

11 **2. Stipulated Motion in Limine No. 2: Insurance.**

12 ☐ Granted ☐ Denied ☐ Reserved

13 Comments: _____

14 _____

15 _____

16 _____.

17 **3. Stipulated Motion in Limine No. 3: Claims of racism or racially motivated**
18 **use of force.**

19 ☐ Granted ☐ Denied ☐ Reserved

20 Comments: _____

21 _____

22 _____

23 _____.

24 **4. Motion in Limine No. 4: Claims that Defendants Feller and/or Anderson**
25 **should have used the lowest level of force or a lower level of force toward Peterson.**

26 ☐ Granted ☐ Denied ☐ Reserved

27 Comments: _____

1 _____
2 _____
3 _____.

4 **5. Stipulated Motion in Limine No. 5: Evidence of post-shooting protests.**

5 ☐ Granted ☐ Denied ☐ Reserved

6 Comments: _____
7 _____
8 _____
9 _____.

10 **6. Motion in Limine No. 6: Reference to other police shootings/interactions.**

11 ☐ Granted ☐ Denied ☐ Reserved

12 Comments: _____
13 _____
14 _____
15 _____.

16 **7. Stipulated Motion in Limine No. 7: Claims that Police Are More Likely**
17 **to Use Force Against Black Males.**

18 ☐ Granted ☐ Denied ☐ Reserved

19 Comments: _____
20 _____
21 _____
22 _____.

23 **8. Motion in Limine No. 8: Any Suggestion by Plaintiffs' Counsel During**
24 ***Voir Dire* serving to "Anchor" a Suggested Verdict Amount.**

25 ☐ Granted ☐ Denied ☐ Reserved

26 Comments: _____
27 _____

1 _____
2 _____
3 **9. Motion in Limine No. 9: Appeal to “Community Danger;” the Reptile**
4 **Theory.**

5 ☐ Granted ☐ Denied ☐ Reserved

6 Comments: _____
7 _____
8 _____
9 _____

10 **10. Stipulated Motion in Limine No. 10: Retention of Peace Officers Research**
11 **Association of California (PORAC) counsel and Defendants’ Assertion of**
12 **Constitutional Rights.**

13 ☐ Granted ☐ Denied ☐ Reserved

14 Comments: _____
15 _____
16 _____
17 _____

18 **11. Motion in Limine No. 11: Claims by lay witnesses that Kevin Peterson**
19 **had any mental or medical condition.**

20 ☐ Granted ☐ Denied ☐ Reserved

21 Comments: _____
22 _____
23 _____
24 _____

25 **12. Stipulated Motion in Limine No. 12: Whether Defendant Feller has**
26 **Prescription Medication.**

27 ☐ Granted ☐ Denied ☐ Reserved

1 Comments: _____

2 _____

3 _____

4 _____.

5 **13. Motion *in Limine* No. 13: Claims for Damages by Non-Party Members of**
6 **Kevin Peterson’s Family.**

7 ☐ Granted ☐ Denied ☐ Reserved

8 Comments: _____

9 _____

10 _____

11 _____.

12 **14. Motion *in Limine* No. 14: Speculation by witnesses that Kevin Peterson’s**
13 **social media threats to law enforcement and others were song lyrics.**

14 ☐ Granted ☐ Denied ☐ Reserved

15 Comments: _____

16 _____

17 _____

18 _____.

19 **15. Motion *in Limine* No. 15: Olivia Selto’s opinion about Kevin Peterson’s**
20 **State of Mind on October 29, 2020.**

21 ☐ Granted ☐ Denied ☐ Reserved

22 Comments: _____

23 _____

24 _____

25 _____.

26 **16. Motion *in Limine* No. 16: Counsel referring during questioning of**
27 **witnesses to “the day you shot and killed Kevin Peterson.”**

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

17. Motion in Limine No. 17: Comments or Statements former Clark County Sheriff Chuck Atkins made to the Press.

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

18. Motion in Limine No. 18: Post-incident statement and recording thereof by former Clark County Sheriff's Detective, Jeremy Brown, Deceased.

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

19. Stipulated Motion in Limine No. 19: Whether or not Defendant Jon Feller has medical accommodations at work in 2023.

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

20. Motion in Limine No. 20: Whether or not conducting the October 29,

2020, buy-bust sting operation involving Kevin Peterson at the Quality Inn hotel parking lot was or was not a “poor” or inferior or improper location for that buy-bust operation.

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

21. Stipulated Motion in Limine No. 21: Hypothetical questions regarding whether a jogger carrying a gun would violate the law.

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

22. Motion in Limine No. 22: Whether or not any law enforcement officer announced or stated to Kevin Peterson “you are under arrest” on October 29, 2020.

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

23. Motion in Limine No. 23: Argument, questions or suggestions that Kevin Peterson, Jr., was a “low level” drug dealer or that he only sold marijuana.

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

24. **Motion *in Limine* No. 24: Questions, testimony or suggestions from Plaintiffs' police practices expert, Greg Gilbertson, as follows:**

(a) That Kevin Peterson, Jr., was shot in the back;

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

(b) That people who are shot or injured try to sit up after being shot or injured;

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

(c) Stipulated That law enforcement officers are precluded from exercising force without first informing the suspect that s/he is under arrest;

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

(d) That Deputy Feller's testimony is "contradicted by the evidence, based on Gilbertson's "conclusion;"

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

(e) That Deputy Feller was required to remain behind the door of his police vehicle in confronting Peterson;

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

(f) That Deputy Anderson was required to provide Peterson warning or “additional” warnings that he would be shot;

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

(g) That the Clark County Sheriff’s Office policy was deficient because it did not contain a definition of “probable cause;”

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

(h) That the Clark County Drug Task Force October 29, 2020, “buy-bust” operation was “negligent” based on Gilbertson’s vision of “common sense;”

☐ Granted ☐ Denied ☐ Reserved

Comments: _____

1 _____
2 _____
3 _____
4 **(i) That if five Deputies had initially approached Peterson in the Quality Inn**
5 **parking lot, Peterson would not have armed himself and fled;**

6 ☐ Granted ☐ Denied ☐ Reserved

7 Comments: _____
8 _____
9 _____
10 _____

11 **(j) That the shooting of Peterson was a “contagion shooting,” based on a New**
12 **York Times article and hearsay;**

13 ☐ Granted ☐ Denied ☐ Reserved

14 Comments: _____
15 _____
16 _____
17 _____

18 **(k) That Deputy Feller was or is “trigger happy;”**

19 ☐ Granted ☐ Denied ☐ Reserved

20 Comments: _____
21 _____
22 _____
23 _____

24 **(l) That the confidential informant involved in the October 29, 2020, “buy-bust”**
25 **operation was “not trustworthy;”**

26 ☐ Granted ☐ Denied ☐ Reserved

27 Comments: _____

1 _____
2 _____
3 _____
4 (m) That the location of the October 29, 2020, “buy-bust” operation occurring
5 at the Quality Inn was occurring in a “high traffic area;”

6 ☐ Granted ☐ Denied ☐ Reserved

7 Comments: _____
8 _____
9 _____
10 _____

11 (n) That on October 29, 2020, Peterson was “in fear for his life.”

12 ☐ Granted ☐ Denied ☐ Reserved

13 Comments: _____
14 _____
15 _____
16 _____

17 25. Stipulated Motion *in Limine* No. 25: Questions, testimony, evidence, or
18 argument concerning emotional distress attributable to the litigation.

19 ☐ Granted ☐ Denied ☐ Reserved

20 Comments: _____
21 _____
22 _____
23 _____

24
25 26. Stipulated Motion *in Limine* No. 26: Reference to the “golden rule.”

26 ☐ Granted ☐ Denied ☐ Reserved

27 Comments: _____

DONE IN OPEN COURT THIS ____ DAY OF _____, 2024.

The Honorable Barbara J. Rothstein

Presented by:

KEATING, BUCKLIN & McCORMACK, INC., P.S.

By: /s/ Thomas P. Miller
Thomas P. Miller, WSBA #34473
Ann E. Trivett, WSBA #39228
Paul J. Triesch, WSBA #17445
Attorneys for Defendant